

IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE

AT KNOXVILLE

OCTOBER SESSION, 1996

FILED
April 10, 1997
Cecil Crowson, Jr.
Appellate Court Clerk

TOMMY BRUMMITT, a/k/a,)
RONNIE ALBERT BRUMMITT,)
Appellant,)

C.C.A. NO. 03C01-9601-CR-00019

VS.)

KNOX COUNTY

STATE OF TENNESSEE,)
Appellee.)

HON. RAY L. JENKINS
JUDGE

(Post-Conviction Relief)

FOR THE APPELLANT

FOR THE APPELLEE

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OPINION FILED _____

AFFIRMED

JERRY L. SMITH, JUDGE

OPINION

This is an appeal from the judgment of the trial court finding that the post-conviction petition of Appellant Tommy Brummitt, a/k/a Ronnie Albert Brummitt, is barred by the statute of limitations found at Tenn. Code Ann. Sec. 40-30-202(a) (Supp. 1996). After a review of the record and the applicable authorities regarding the issue raised by Appellant we have concluded the judgment of the lower court must be affirmed.

Appellant pled guilty in Knox County Criminal Court on April 19, 1983, to the offense of concealing stolen property. On September 12, 1995, he filed a petition for post-conviction relief alleging that his guilty plea had been involuntarily entered. On September 15, 1995, the post-conviction court dismissed the petition as time-barred by the statute of limitations found at Tenn. Code Ann. Sec. 40-30-202(a). In this appeal Appellant maintains that his petition is not time-barred because Sec. 40-30-202(a), although shortening the statute of limitations for post-conviction cases from three years to one year, created a one year window from its effective date to present previously time-barred post-conviction claims. Appellant claims therefore he had one year from May 10, 1995, the effective date of Sec. 40-30-202(a), to file the petition involved in the case sub judice, even though his time for filing post-conviction petitions under the previous three year limitations period expired on July 1, 1989.¹

On ¹Prior to July 1, 1986, there was no statute of limitations period covering post-conviction cases. this date Tenn. Code Ann. Sec. 40-30-102 (1990) (Repealed), became effective creating a three year limitations period. Rather than allowing summary dismissal of all post-conviction petitions more than three years old on July 1, 1986, this Court found that the statute of limitations period began for all claimants on that date. State v. Masucci, 754 S.W.2d 90 (Tenn. Crim. App. 1988).

This Court has on numerous occasions addressed the precise issue raised by this appeal. In Carter v. State, 1996 WL 389243 (Tenn. Crim. App. July 11, 1996) (Welles, J. dissenting), perm. app. granted, (Tenn. Dec. 2, 1996); a divided panel of this Court agreed with the position espoused by Appellant in this appeal. However in the majority of cases decided since Carter, this Court has taken the position that Tenn. Code Ann. Sec. 40-30-202(a) did not operate to revive post-conviction claims already barred under the previous limitation period. See, e.g., State v. Brummitt, 1997 WL 106679 (Tenn. Crim. App. Mar. 11, 1997); Carter v. State, 1997 WL 59422 (Tenn. Crim. App. Feb. 13, 1997); Pendleton v. State, 1997 WL 59501 (Tenn. Crim. App. Feb. 13, 1997); Blake v. State, 1997 WL 55939 (Tenn. Crim. App. Feb. 12, 1997); Tillman v. State, 1997 WL 55853 (Tenn. Crim. App. Feb. 12, 1997); Kimery v. State, 1997 WL 31143 (Tenn. Crim. App. Jan. 28, 1997); Koprowski v. State, 1997 WL 33638 (Tenn. Crim. App. Jan. 28, 1997); Butler v. State, 1996 WL 691506 (Tenn. Crim. App. Dec. 2, 1996); Butler v. Bell, 1996 WL 667907 (Tenn. Crim. App. Nov, 19, 1996).

We believe the better reasoned decisions of this Court to be those which hold that post-conviction claims which were time-barred under the previous post-conviction statute of limitations remained barred even after the enactment of Tenn. Code Ann. Sec. 40-30-202(a). To hold otherwise would circumvent the clear legislative intent found at Sec. 40-30-202(a), i.e. to limit the number of post-conviction petitions and to reduce the time in which such petitions must be filed.

Accordingly, the judgment of the trial court dismissing Appellant's post-conviction petition as time-barred is affirmed.

JERRY L. SMITH, JUDGE

CONCUR:

(NOT PARTICIPATING)

GARY R. WADE, JUDGE

DAVID H. WELLES, JUDGE